



07-14-06

IFW  
DAC

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail, Airbill No. EV 798 282 642 US, in an envelope addressed to: MS PETITIONS, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, Attn: Karen Creasy, Petitions Examiner, on the date shown below.

Dated: July 12, 2006

Signature:

*Judy Calem*  
(Judy Calem)

Docket No.: 564462000820  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Dan E. ROBERTSON et al.

Application No.: 09/903,410

Confirmation No.: 8980

Filed: July 10, 2001

Art Unit: 1652

For: ENZYMES HAVING ESTERASE ACTIVITY  
AND METHODS OF USE THEREOF

Examiner: R. Prouty

PETITION TO EXPEDITE REVIEW OF PETITION UNDER 37 CFR 1.182

MS PETITIONS  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450  
**Attention: Karen Creasy, Petitions Examiner**

Dear Sir:

Applicants respectfully request entry of this Petition to Expedite Review of Petition under CFR 37 Rule 1.182 for the above-captioned patent application.

07/17/2006 EFLORES 00000003 031952 09903410

01 FC:1462 400.00 DA

sd-325535

REMARKS

Applicants respectfully request expedited review of the "RENEWED PETITION TO ACCEPT UNINTENTIONALLY DELAYED CLAIM FOR PRIORITY UNDER 35 U.S.C. §365(C)" filed on March 24, 2006. Enclosed please find a copy of that document (16 pages).

Applicants need an expedited decision on the March 24, 2006, petition to address a substantive rejection made in a pending office action on the merits.

If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing **Docket No. 564462000820**. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: July 12, 2006

Respectfully submitted,

By 

Gregory P. Einhorn

Registration No.: 38,440

MORRISON & FOERSTER LLP

12531 High Bluff Drive

Suite 100

San Diego, California 92130-2040

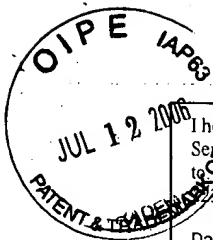
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I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail, Airbill No. EV 743886683 US, in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Dated: March 24, 2006

Signature:

*Norman Green*  
(Norman Green)

Docket No.: 564462000820 /  
D1180-2US  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Dan E. ROBERTSON et al.

Confirmation No.: 8980

Application No.: 09/903,410

Art Unit: 1652

Filed: July 10, 2001

Examiner: Rebecca E. Prouty

For: ENZYMES HAVING ESTERASE ACTIVITY  
AND METHODS OF USE THEREOF

**AMENDMENT TO SPECIFICATION  
IN RESPONSE TO DECISION ON PETITION**

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This Amendment is being filed concurrently with a RENEWED PETITION UNDER 37 CFR 1.78(a)(3) FOR UNINTENTIONAL DELAY OF ADDITION OF PRIORITY CLAIM in response to the DECISION ON PETITION mailed May 28, 2004.

Amendments to the Specification begin on Page 2 of this paper.

**AMENDMENTS TO THE SPECIFICATION**

**On page 1 of the specification, under the title, please replace paragraph [0001] with the following rewritten paragraph:**

[0001] This application is a continuation-in-part of and claims the benefit of U.S. Application Serial No. 09/382,242, filed August 24, 1999, now ~~pending~~ abandoned; which is a continuation of U.S. Application Serial No. 08/602,359, filed February 16, 1996, now issued U.S. Patent 5,954,430, ~~and is a continuation of PCT/US97/02039, filed February 11, 1997, published in English on August 21, 1997 as WO 97/30160,~~ all which are herein incorporated by reference in their entirety. This application also claims the benefit of priority to, and is a continuation of, PCT/US97/02039, filed February 11, 1997, published in English on August 21, 1997.

**REMARKS**

This application is amended simply to claim priority from a PCT application which discloses aspects of the claimed invention. A petition to accept a tardy claim of benefit is enclosed, along with the required fee.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorize the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing Docket No. 564462000820.

Dated: March 24, 2006

Respectfully submitted,

By 

Gregory P. Einhorn

Registration No.: 38,440

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I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail, Airbill No. EV 743886683 US, in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Dated: March 24, 2006

Signature:

*Norman Green*  
(Norman Green)

Docket No.: 564462000820 /  
D1180-2US  
(PATENT)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
Dan E. ROBERTSON et al.

Confirmation No.: 8980

Application No.: 09/903,410

Art Unit: 1652

Filed: July 10, 2001

Examiner: Rebecca E. Prouty

For: ENZYMES HAVING ESTERASE ACTIVITY  
AND METHODS OF USE THEREOF

**RENEWED PETITION TO ACCEPT  
UNINTENTIONALLY DELAYED CLAIM FOR PRIORITY UNDER 35 U.S.C. § 365(c)**

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In response to the DECISION ON PETITION (the "DECISION", copy attached) mailed May 28, 2004, received in connection with the subject application, from the OFFICE OF PETITIONS, dismissing Applicants' Petition submitted May 13, 2004, Applicants hereby renew their petition for entry of the enclosed amendment claiming benefit under 35 U.S.C. § 365(c) of International Application No. PCT/US97/02039, filed February 11, 1997 and published as WO 97/30160. The present application is directed to enzymes having esterase activity and methods of use thereof; aspects of this were described in International Application No. PCT/US97/02039. The applications contain at least one inventor in common and the PCT application discloses the invention claimed herein.

Applicants hereby state that the entire delay between the date the claim for benefit was due under 37 C.F.R. § 1.78(a)(5) and the date of the prior petition was unintentional.

Applicants therefore submit concurrently herewith a Substitute Amendment in compliance with the stated requirement of the DECISION. Entry of the Substitute Amendment and accordation of benefit are respectfully requested.

Applicants also submit concurrently a copy of Supplemental Application Data Sheet as filed with the prior Petition on May 13, 2004 which now properly compares with the amended Specification.

Applicants also request that an Updated Filing Receipt be issued containing the amendment to the Specification in the Substitute Amendment under the heading:

**"Domestic Priority data as claimed by applicant"**

No fee is believed to be due for this Renewed Petition, as the required fee was submitted with the previous Petition.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorize the Assistant Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket No. 564462000820.

Dated: March 24, 2006

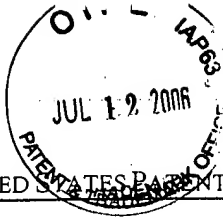
Respectfully submitted,

By 

Gregory P. Einhorn

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UNITED STATES PATENT AND TRADEMARK OFFICE

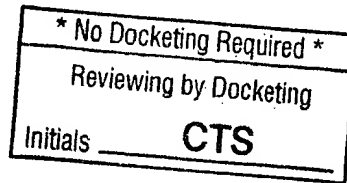
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JUN 02 2004

MORRISON & FOERSTER  
SAN DIEGO

Commissioner for Patents  
United States Patent and Trademark Office  
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MAY 28 2004

OFFICE OF PETITIONS

In re Application of  
Dan E. Robertson et al  
Application No. 09/903,410  
Filed: July 10, 2001  
Attorney Docket No. 564462000820

:  
:  
: DECISION ON PETITION  
: UNDER 37 CFR 1.78(a)(3)  
:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed May 17, 2004, to accept an unintentionally delayed claim under 35 U.S.C. §§ 120 and 365(c) for the benefit of priority to the prior-filed PCT application set forth in the amendment filed concurrently with the instant petition.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application(s), unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant petition does not comply with item (1) above.

A reference to add the above-noted, prior-filed application on page one following the first sentence of the specification has been included in a concurrently filed amendment. However, the amendment is not acceptable as drafted since it improperly incorporates by reference the prior-filed applications. Petitioner's attention is directed to Dart Industries v. Banner, 636 F.2d 684, 207 USPQ 273 (C.A.D.C. 1980), where the court drew a distinction between a permissible 35

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U.S.C. § 120 statement and the impermissible introduction of new matter by way of incorporation by reference in a 35 U.S.C. § 120 statement. The court specifically stated:

Section 120 merely provides a mechanism whereby an application becomes entitled to benefit of the filing date of an earlier application disclosing the same subject matter. Common subject matter must be disclosed, in both applications, either specifically or by an express incorporation-by-reference of prior disclosed subject matter. Nothing in section 120 itself operates to carry forward any disclosure from an earlier application. In re deSeversky, supra at 674, 177 USPQ at 146-147. Section 120 contains no magical disclosure-augmenting powers able to pierce new matter barriers. It cannot, therefore, "limit" the absolute and express prohibition against new matter contained in section 251.

In order for the incorporation by reference statement to be effective as a proper safeguard against the omission of a portion of a prior application, the incorporation by reference statement must be included in the specification-as-filed, or in an amendment specifically referred to in an oath or declaration executing the application. See In re deSeversky, supra. Note also MPEP 201.06(c).

Additionally, the amendment filed with the instant petition do not compare with the application data sheet. It is not clear in the amendment what application is the PCT a continuation of, and the relationship of Application No. 09/382,242, to the instant application is not stated.

Accordingly, before the petition under 37 CFR 1.78(a)(3) can be granted, a substitute amendment<sup>1</sup> deleting the incorporation by reference statement to the prior-filed PCT application and correcting the above matter along with a renewed petition under 37 CFR 1.78(a)(3), is required.

As authorized, the \$1330 fee required by 37 CFR 1.78(a)(3)(ii) will be charged to petitioner's Deposit Account No. 03-1952.

Further correspondence with respect to this matter should be addressed as follows:

By mail:                      Mail Stop PETITIONS  
                                    Commissioner for Patents  
                                    Post Office Box 1450  
                                    Alexandria, VA 22313-1450

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<sup>1</sup> Note 37 CFR 1.121

By hand: Customer Window located at:

2011 South Clark Place  
Crystal Plaza Two Lobby  
Room 1B03  
Arlington, VA 22202

By fax: (703) 872-9306  
ATTN: Office of Petitions

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-8859.



Karen Creasy  
Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

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## Supplemental Application Data Sheet

### Application Information

Application number:: 09/903,410  
Filing Date:: 07/10/01  
Application Type:: Regular  
Subject Matter:: Utility  
Suggested Group Art Unit:: 1652  
CD-ROM or CD-R?:: None  
Sequence submission?:: None  
Computer Readable Form (CRF)?:: No  
Title:: ENZYMES HAVING ESTERASE ACTIVITY  
AND METHODS OF USE  
Attorney Docket Number:: 564462000820  
Request for Early Publication?:: No  
Request for Non-Publication?:: No  
Small Entity?:: No  
Petition included?:: Yes  
Secrecy Order in Parent Appl.?:: No

### Applicant Information

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Applicant Authority Type:: Inventor  
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City of mailing address:: Carlsbad  
State or Province of mailing address:: CA  
Postal or Zip Code of mailing address:: 92009

#### **Correspondence Information**

Correspondence Customer Number:: 25225

#### **Representative Information**

Representative Customer Number:: 25225

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### Domestic Priority Information

Application::	Continuity Type::	Parent Application::	Parent Filing Date::
This Application	Continuation-in-part of	09/382,242	08/24/99
09/382,242	Continuation of	08/602,359	02/16/96
09/382,242	Continuation of	PCT/US97/02039	02/11/97

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PTO/SB/21 (09-04)  
Approved for use through 07/31/2006. OMB 0651-0031  
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE  
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	09/903,410	
	Filing Date	July 10, 2001	
	First Named Inventor	Dan E. ROBERTSON	
	Art Unit	1652	
	Examiner Name	R. Prouty	
Total Number of Pages in This Submission	21	Attorney Docket Number	564462000820

ENCLOSURES (Check all that apply)		
<input checked="" type="checkbox"/> Fee Transmittal Form (1 page plus duplicate for fee processing)	<input type="checkbox"/> Drawing(s)	<input type="checkbox"/> After Allowance Communication to TC
<input type="checkbox"/> Fee Attached	<input type="checkbox"/> Licensing-related Papers	<input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences
<input type="checkbox"/> Amendment/Reply	<input checked="" type="checkbox"/> Petition (2 pages)	<input type="checkbox"/> Appeal Communication to TC (Appeal Notice, Brief, Reply Brief)
<input type="checkbox"/> After Final	<input type="checkbox"/> Petition to Convert to a Provisional Application	<input type="checkbox"/> Proprietary Information
<input type="checkbox"/> Affidavits/declaration(s)	<input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address	<input type="checkbox"/> Status Letter
<input type="checkbox"/> Extension of Time Request	<input type="checkbox"/> Terminal Disclaimer	<input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<input type="checkbox"/> Express Abandonment Request	<input type="checkbox"/> Request for Refund	Copy of documents filed on March 24, 2006 (16 pages) Return Receipt Postcard
<input type="checkbox"/> Information Disclosure Statement	<input type="checkbox"/> CD, Number of CD(s) _____	
<input type="checkbox"/> Certified Copy of Priority Document(s)	<input type="checkbox"/> Landscape Table on CD	
<input type="checkbox"/> Reply to Missing Parts/Incomplete Application	Remarks	
<input type="checkbox"/> Reply to Missing Parts under 37 CFR 1.52 or 1.53	<b>CUSTOMER NO.: 45975</b>	

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm Name	MORRISON & FOERSTER LLP		
Signature			
Printed name	Gregory P. Einhorn		
Date	July 12, 2006	Reg. No.	38,440

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail, Airbill No. EV 798 282 642 US, in an envelope addressed to: MS PETITIONS, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, Attention: Karen Creasy, Petitions Examiner, on the date shown below.	
Dated: July 12, 2006	Signature:  (Judy Calem)



Atty Docket No.: 564462000820

Inventor: Dan E. ROBERTSON et al.

Application No.: 09/903,410

Filing Date: July 10, 2001

Title: ENZYMES HAVING ESTERASE ACTIVITY AND METHODS OF USE  
THEREOF

**Documents Filed:**

Transmittal (1 page)

Renewed Petition to Accept Unintentionally Delayed Claim for Priority Under 35 U.S.C. § 365(c) (2 pages)

Amendment to Specification in Response to Decision on Petition (3 pages)

Copy of Decision on Petition mailed May 28, 2004 (3 pages)

Copy of Supplemental Application Data Sheet as filed with prior Petition on May 13, 2004 (6 pages)

Via: Express Mail: Airbill No. EV 743886683 US

Sender's Initials: GPE2/nxg4

Date: March 24, 2006

2115

Atty Docket No.: 564462000820

Inventor: Dan E. ROBERTSON et al.

Application No.: 09/903,410

Filing Date: July 10, 2001

Title: ENZYMES HAVING ESTERASE ACTIVITY AND METHODS OF USE  
THEREOF

**Documents Filed:**

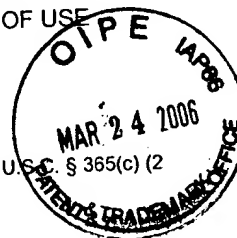
Transmittal (1 page)

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Copy of Supplemental Application Data Sheet as filed with prior Petition on May 13, 2004 (6 pages)



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MORRISON & FOERSTER LLP  
SAN DIEGO

Via: Express Mail: Airbill No. EV 743886683 US

Sender's Initials: GPE2/nxg4

Date: March 24, 2006



Under the Paperwork Reduction Act of 1995, no person are required to respond to a collection of information unless it displays a valid OMB control number.

**PETITION FEE**  
**Under 37 CFR 1.17(f), (g) & (h)**  
**TRANSMITTAL**

(Fees are subject to annual revision)

**Send completed form to:**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Application Number	09/903,410
Filing Date	July 10, 2001
First Named Inventor	Dan E. ROBERTSON
Art Unit	1652
Examiner Name	R. Prouty
Attorney Docket Number	564462000820

Enclosed is a petition filed under 37 CFR 1.182 that requires a processing fee (37 CFR 1.17(f), (g), or (h)). Payment of \$ 400.00 is enclosed.

This form should be included with the above-mentioned petition and faxed or mailed to the Office using the appropriate Mail Stop (e.g., Mail Stop Petition), if applicable. For transmittal of processing fees under 37 CFR 1.17(i), see form PTO/SB/17i.

**Payment of Fees** (small entity amounts are NOT available for the petition fees).

☒ The Commissioner is hereby authorized to charge the following fees to Deposit Account No. 03-1952 :

☒ Petition fee under 37 CFR 1.17(f), (g) or (h) ☒ Any deficiency of fees and credit of any overpayments

Enclose a duplicative copy of this form for fee processing.

☐ Check in the amount of \$ \_\_\_\_\_ is enclosed.

☐ Payment by credit card (Form PTO-2038 or equivalent enclosed). Do not provide credit card information on this form.

**Petition Fees under 37 CFR 1.17(f): Fee \$400 Fee Code 1462**

For petitions filed under:

- § 1.53(e) – to accord a filing date.
- § 1.57(a) – to accord a filing date.
- § 1.182 – for decision on a question not specifically provided for.
- § 1.183 – to suspend the rules.
- § 1.378(e) – for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent.
- § 1.741(b) – to accord a filing date to an application under § 1.740 for extension of a patent term.

**Petition Fees under 37 CFR 1.17(g): Fee \$200 Fee Code 1463**

For petitions filed under:

- § 1.12 – for access to an assignment record.
- § 1.14 – for access to an application.
- § 1.47 – for filing by other than all the inventors or a person not the inventor.
- § 1.59 – for expungement of information.
- § 1.103(a) – to suspend action in an application.
- § 1.136(b) – for review of a request for extension of time when the provisions of section 1.136(a) are not available.
- § 1.295 – for review of refusal to publish a statutory invention registration.
- § 1.296 – to withdraw a request for publication of a statutory invention registration filed on or after the date the notice of intent to publish issued.
- § 1.377 – for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent.
- § 1.550(c) – for patent owner requests for extension of time in *ex parte* reexamination proceedings.
- § 1.956 – for patent owner requests for extension of time in *inter partes* reexamination proceedings.
- § 5.12 – for expedited handling of a foreign filing license.
- § 5.15 – for changing the scope of a license.
- § 5.25 – for retroactive license.

**Petition Fees under 37 CFR 1.17(h): Fee \$130 Fee Code 1464**

For petitions filed under:

- § 1.19(g) – to request documents in a form other than that provided in this part.
- § 1.84 – for accepting color drawings or photographs.
- § 1.91 – for entry of a model or exhibit.
- § 1.102(d) – to make an application special.
- § 1.138(c) – to expressly abandon an application to avoid publication.
- § 1.313 – to withdraw an application from issue.
- § 1.314 – to defer issuance of a patent.

Signature

July 12, 2006

Date

Gregory P. Einhorn

Typed or printed name

38,440

Registration No., if applicable